

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1962

No. 202

CHARLES EDWARD SANDERS, PETITIONER

vs.

UNITED STATES

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE NINTH CIRCUIT

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1 In the United States District Court for the Northern District of California, Northern Division

No. 12310

UNITED STATES OF AMERICA, PLAINTIFF

v.

CHARLES EDWARD SANDERS, DEFENDANT

Before Hon. SHERRILL HALBERT, Judge

Reporter's transcript of proceedings at time of plea

Monday, January 19, 1959

[File endorsement omitted.]

Appearances

For the Government: (Defendant waived counsel.)

G. JOSEPH BERTAIN, Esq.,
Assistant United States Attorney.

2 MONDAY, JANUARY 19, 1959—9:50 A.M.

The CLERK. Are there any ex parte matters?

Mr. BERTAIN. Yes, there are, your Honor. In the case of United States against Charles Edward Sanders. Mr. Sanders, will you step up here, please? Let the record show that I now hand Mr. Sanders a copy of the proposed information against him charging him with bank robbery.

In proceedings Friday before the United States Commissioner, your Honor, Mr. Sanders indicated that he wishes to proceed by waiver of indictment and the filing of an information against him.

The COURT. Is your true name Charles Edward Sanders?

The DEFENDANT. Yes, sir.

The COURT. Mr. Sanders, you are before the Court at this time as the result of a charge having been lodged against you for violation of Title 18, United States Code, Section 2113-A,

bank robbery. It is alleged in the charge that on or about the 16th day of January, 1959, you took from Frances C. Collins certain money or property, to wit, approximately \$220, she being an officer of the Crocker-Anglo Bank here in Sacramento.

This a felony, a crime, for which you can be fined or imprisoned or both.

Under the law you have certain rights which I want to explain to you. The first of these is you have a right to

3 have an attorney at all stages of these proceedings.

That is, you have a right to have a lawyer to advise and counsel with you and represent you if you so desire. If you desire the services of an attorney I will see that you are afforded the opportunity to have one. That is a right which you can waive and proceed without an attorney if you wish to do so; but if you want to proceed without an attorney you will have to tell me that you know that you have the right to have an attorney and you expressly waive that right here in open court.

Now what are your wishes in this matter, do you desire the services of an attorney?

The DEFENDANT. No, your Honor.

The COURT. You understand you have the right to have one, do you?

The DEFENDANT. Yes, your Honor.

The COURT. And you now waive that here in open court?

The DEFENDANT. Yes.

The COURT. In addition thereto, Mr. Sanders, you have a right to have this matter heard by the grand jury of this court, for this is a felony and no person can be brought to trial in this court on a felony charge except by the indictment of the grand jury, unless they waive that right and desire to proceed by way of information. If you wish to do that you may do so, but you will have to tell me that you know that you have the right to have the matter heard by the grand jury and that you waive that right here in open court.

4 In addition I will say to you that I can accept from you only a plea of guilty on this charge, for if you think you are not guilty of this charge you should have the matter heard by the grand jury to determine whether or not you should even be brought here for trial.

Having in mind all that I have told you do you wish to have the matter heard by the grand jury?

The DEFENDANT. No, your honor, I waive it.

The COURT. I didn't hear that.

The DEFENDANT. I waive that right.

The COURT. You waive that right?

The DEFENDANT. Yes.

The COURT. You understand you do have the right, though?

The DEFENDANT. Yes.

The COURT. And you now want to proceed without indictment and by way of information?

The DEFENDANT. Yes.

The COURT. Now, Mr. Sanders, has anybody made any threats against you to get you to proceed in this fashion?

The DEFENDANT. No, your Honor.

The COURT. Has any one made any promises to you if you will proceed in this fashion?

The DEFENDANT. No, your Honor.

The COURT. You understand that it is being done freely and voluntarily of your own will and wish, is that right?

5 The DEFENDANT. Yes.

The COURT. Very well, you may take the necessary waiver and file your information.

(The defendant signs document.)

Mr. BERTAIN. Let the record show that the defendant, Mr. Sanders, has signed the waiver of indictment. The same is witnessed by Mr. Erich, deputy United States Marshal and we ask leave of court to file the same at this time, your Honor.

The COURT. It may be received and filed.

The CLERK: The United States Attorney for this division and district has filed an information charging violation of Title 18 United States Code, Section 2113-A, bank robbery, against Charles Edward Sanders. Do you have a copy of this information?

The DEFENDANT. Yes, sir.

The CLERK. The United States Attorney charges, (1), that at all times herein mentioned the Crocker-Anglo National Bank, Capital Office, Sacramento, Sacramento County, California, hereinafter referred to as said bank, was a bank duly

organized and existing under the laws of the State of California, and an insured bank as defined in subsection (h), section 1813, Title 12, United States Code, Federal Deposits Insurance Act. That is to say, the deposits of said bank were at all times herein mentioned insured by the Federal Deposits Insurance Corporation in accordance with the provisions of
6 the Federal Deposits Insurance Act, as amended.

That the said bank was a member of the Federal Reserve System; that said bank was at all times herein mentioned doing a general banking business in Sacramento, County of Sacramento, State of California; that at all times herein mentioned Frances C. Cullen was a teller of said bank and acting as such.

(2) On the 16th day of January, 1959, in the city of Sacramento, County of Sacramento, in the northern division of the northern district of California, and within the jurisdiction of this court, Charles Edward Sanders, the defendant herein, then and there by intimidation did unlawfully, wilfully and feloniously take from the presence of said Frances C. Cullen certain money and property, to wit, approximately \$220 lawful money of the United States, which said money and property then and there did belong to, and was under the care, custody and control of, said bank.

Mr. Sanders, do you understand the charge in this information?

The DEFENDANT. Yes.

The CLERK. The information is in one count. Are you ready at this time to enter a plea?

The DEFENDANT. Yes, sir.

The CLERK. What is your plea, guilty or not guilty?

The DEFENDANT. Guilty.

7 The CLERK. Guilty.

The COURT. Let the plea be entered. This matter will be referred to the probation officer for his consideration and report. I will continue this matter over to Monday, February 2, 1959, at the hour of 9:30 A.M. At that time I will consider probation and it is also fixed as the time for the pronouncement of judgment in this case.

What about bail in this matter?

Mr. BERTAIN. Suggest a bail of \$10,000, your Honor.

The COURT. Let bail be fixed in the amount of \$10,000 in this case. The defendant is remanded to the custody of the marshal pending this presentence investigation.

(Further proceedings in this matter were continued to February 2, 1959, at 9:30 A.M., at which time they were continued to February 3, 1959, at 9:30 A.M. at which time they were continued to Tuesday, February 10, 1959, at 9:30 A.M.)

8 In United States District Court for the Northern
District of California, Northern Division

No. 12310

Waiver of Indictment

Filed January 19, 1959

[Title omitted.]

[File endorsement omitted.]

Charles Edward Sanders the above named defendant, who is accused of—Title 18, United States Code, Section 2113(a)—Bank Robbery, being advised of the nature of the charge and of his rights, hereby waives in open court prosecution by indictment and consents that the proceeding may be by information instead of by indictment.

Charles Edward Sanders.

CHARLES EDWARD SANDERS,

Defendant.

Witness.

Counsel for Defendant.

9 In the United States District Court for the Northern
District of California, Northern Division

Cr. No. 12310

Information

Filed January 19, 1959

18 U.S.C. 2113(a)—Bank Robbery

[Title omitted.]

[File endorsement omitted.]

The United States Attorney charges:

1. That at all times herein mentioned, the Crocker-Anglo National Bank, Capital Office, Sacramento, Sacramento County, California, hereinafter referred to as "said bank," was a bank duly organized and existing under the laws of the State of California and an insured bank as defined in subsection (h) of Section 1813 of Title 12, United States Code (Federal Deposits Insurance Act), that is to say—the deposits of said bank were at all times herein mentioned insured by the Federal Deposits Insurance Corporation in accordance with the provisions of the Federal Deposits Insurance Act, as amended; that said bank was a member of the Federal Reserve System; that said bank was at all times herein mentioned doing a general banking business at Sacramento, County of Sacramento, State of California. At all times herein mentioned Frances C. Cullen
10 was a Teller of said bank and acting as such.

II. On the 16th day of January, 1959, in the City of Sacramento, County of Sacramento, in the Northern Division of the Northern District of California, and within the jurisdiction of this Court, Charles Edward Sanders, the defendant herein, did then and there by intimidation, unlawfully, wilfully and feloniously take from the presence of said Frances C. Cullen certain money and property, to wit: approximately \$220.00 lawful money of the United States, which said money

and property then and there did belong to and was in the care, custody and control of said bank.

(18 USC 2113(a).)

ROBERT H. SCHNACKE,
United States Attorney.

By G. Joseph Bertain, Jr.,
G. JOSEPH BERTAIN, Jr.,
Assistant U.S. Attorney.

11 In United States District Court
Reporter's Transcript of Sentence

February 10, 1959

TUESDAY, FEBRUARY 10, 1959—9:30 A.M.

The CLERK. Case No. 12310, U.S. v. Charles Edward Sanders, for judgment.

The COURT. In this case this defendant has heretofore been before this court on an information charging him with a violation of Title 18 United States Code, Section 2113-A, bank robbery. The defendant appeared before the Court, waived the aid of counsel, was arraigned and entered a plea of guilty to the offense set forth in the indictment.

The matter was referred to the probation officer for his consideration and report. He has provided me with a report which I have read and examined.

This is the time and place fixed for the consideration of probation in this case and also for the pronouncement of judgment in this case.

Is there anything to add to this report, Mr. Nicholson?

Probation Officer NICHOLSON. No, your Honor.

The COURT. Mr. Bertain, is there anything that the Government desires to say?

Mr. BERTAIN. No, your Honor.

The COURT. Is there anything you want to say, Mr. Sanders, before judgment is pronounced?

Mr. SANDERS. If possible, your Honor, I would like to go to Springfield or Lexington for addiction cure. I have been using narcotics off and on for quite a while.

The Court. Well, I am willing to recommend that. Of course, it is up to the Attorney General what is done in that regard. But I suggest that it be noted that this man has indicated that he has had difficulty with narcotics and he desires to be treated, and I think that is not only humane but proper and just under the circumstances.

In this case, Mr. Sanders, it is the judgment of the Court and the sentence of the law that for this offense to which you have entered a plea of guilty you be imprisoned in a federal penitentiary for a term of 15 years, the institution to be selected by the Attorney General.

The defendant is remanded to the custody of the marshal for delivery into the custody of the authorities of the institution selected by the Attorney General.

These recommendations may be incorporated in the report.

[Reporter's certificate to foregoing transcript omitted in printing.]

In United States District Court for the Northern
District of California, Northern Division

No. 12310

UNITED STATES OF AMERICA

v.

CHARLES EDWARD SANDERS

Judgement and commitment

February 10, 1959

[File endorsement omitted.]

On this 10th day of February, 1959 came the attorney for the government and the defendant appeared in person and ¹

¹ Insert "by counsel" or "without counsel; the court advised the defendant of his right to counsel and asked him whether he desired to have counsel appointed by the court, and the defendant thereupon stated that he waived the right to the assistance of counsel."

without counsel; the Court advised the defendant of his right to counsel and asked him whether he desired to have counsel appointed by the Court, and the defendant thereupon stated that he waived the right to the assistance of counsel.

It is adjudged that the defendant has been convicted upon his plea of ² Guilty of the offense of violation of Title 18 U.S.C., Section 2113(a), (Bank Robbery) in that on or about January 16th, 1959 in Sacramento, California, he did by intimidation, unlawfully, wilfully and feloniously take certain money belonging to a Bank insured under the Federal Deposits Insurance Act as charged ³ in the Information and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It is adjudged that the defendant is guilty as charged and convicted.

It is adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of ⁴ fifteen (15) years.

It is adjudged that ⁵

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

SHERRILL HALBERT,

United States District Judge.

The Court recommends commitment to: ⁶ a Medical Facility for treatment.

² Insert (1) "guilty," (2) "not guilty, and a verdict of guilty," (3) "not guilty, and a finding of guilty," or (4) "nolo contendere," as the case may be.

³ Insert "in count(s) number" if required.

⁴ Enter (1) sentence or sentences, specifying counts if any; (2) whether sentences are to run concurrently or consecutively and, if consecutively, when each term is to begin with reference to termination of preceding term or to any other outstanding or unserved sentence; (3) whether defendant is to be further imprisoned until payment of the fine or fine and costs, or until he is otherwise discharged as provided by law.

⁵ Enter any order with respect to suspension and probation.

⁶ For use of Court wishing to recommend a particular institution.

Entered in Criminal Docket February 11, 1959.

C. W. CALBREATH,

By _____
Deputy Clerk.

14 In the United States District Court for the Northern
District of California, Sacramento

Title 28 U.S.C. Section 2255

IN THE MATTER OF APPLICATION,
CHARLES EDWARD SANDERS, DEFENDANT
v.

THE UNITED STATES OF AMERICA, PLAINTIFF.

Motion to vacate and set aside an illegal sentence

Filed January 4, 1960 .

[File endorsement omitted.]

Comes now the Petitioner, Charles Edward Sanders, an American Citizen to Petition the Court to Set Aside and Vacate Sentence on the following grounds:

I

The Petitioner challenges the validity of the Indictment and the Petitioner feels that his Constitutional rights has been violated.

II

The United States District Court for the Northern District of California was without Jurisdiction, Judgment, and Sentence in the Case at bar, due to the violation of the Appellant's Constitutional Rights. The Appellant was denied adequate assistance of Counsel as guaranteed by the Sixth Amendment to the Constitution of the United States of America.

The Trial Court's action of denying to the Appellant adequate assistance of Counsel, violated the Constitutional Rights of the Petitioner as provided by the Fourteenth Amendment to the Constitutional guaranteeing due process of law and equal protection of law.

III

The United States District Court for the Northern District of California lost Jurisdiction in the Case at bar when said Court allowed the Appellant to be intimidated and coerced into intering a plea without Counsel, and any knowledge of the charges lodged against the Appellant.

15

ARGUMENT

"In all criminal prosecution, the accused shall enjoy the right—to have the assistance of counsel for his defense." Constitution of the United States, Fourteenth Amendment.

"The assistance of counsel means the effective assistance of counsel in the preparation and trial of the cause." *Edwards v. U.S.* 78 US app. D.C. 139 F 2d, 365, 367 N. 4.

In *United States (Ex rel.) Mitchell v. Thompson*, 56 F Supp. 683, 687 (2d NT, 1944), the Court habeas corpus had been accorded his rights to assistance of Counsel under the 6th Amendment, States:

"In order to determine whether petitioner has been deprived of his constitutional right it becomes my duty to canvass the several factors revelant thereto regardless whether they fit into the precise terms of issues as stipulated. These facts are: (1) The time of appointment; (2) The opportunity afforded the appointee to confer and prepare; and (3) The qualification of the appointee."

In the leading case, *Powell v Alabama*, 278 US, 45, 58, the United States Supreme Court stated:

"It is not enough to assume that the counsel thus percipitated into the case though there was no defense. Neither they nor the Court may say what prompt and thoroughing investigation might disclose as to the facts; no attempt was made to investigate . . . under the circumstances disclosed, we hold that the defendant was not accorded the right to counsel in any substantial scence, to decide otherwise would be to ignore the realities."

It is important that this Court note the following paragraph quoted from Section 226, F.C.C.

"The defendant's Attorney generally waives the reading of the Indictment by the Clerk of the Court to the defendant, and

pleads his client not guilty, obtaining leave of the Court to withdraw the plea if he should desire to enterpose a motion to quash or Demurrer to the Indictment. In most cases it is desirable to obtain as long a postponement of the trial as possible."

16 "—a conviction on a plea of guilty, coerced by a Federal Law Enforcement Officer is no more consistent with Due Process than a conviction supported by a coerced confession—in such circumstances the use of a conviction for a crime is not restricted to those cases where the judgment of conviction is void for the want of jurisdiction of the trial court to render it. It extends also to those cases where the conviction has been in disregard of the constitutional rights of the accused, and where the writ is the only effective means of preserving his rights." *Moore v. Dempsey*, 261 US 86; *Mooney v. Holohan*, 294 US 103; *Bowen v. Johnson* 306 US 1924.

In *U.S. v. Calhoun*, 257 F. 2d 637; In *U.S. v. Cruckshand* (72 US 542, 557, 558, 23 L. Ed. 588), The Supreme Court said:

"In criminal cases, prosecuted under the laws of the United States, the accused has the Constitutional right to be informed of the nature and cause of the accusation. Amend. VI. In *U.S. v. Mills*, 7 pet. 142, This was construed to mean, that the Indictment must set forth the offense with clearness and all necessary certainty, to apprise the accused of the crime with which he stands charged; and In *U.S. v. Cook*, 17 wall 174, that every ingredient of which the offense is composed must be accurately and clearly alleged."

This Court must agree whereas the principal support by the above cases shows that the jurisdiction of a Court may be lost, after it has once attached, not only by defective constitution of the tribunal or by action or failure to act on the part of the Court, but also, by illegal activities of prosecuting and law enforcement officers outside of the Court and of which the Court may not even be aware.

In the case at bar the proceedings of the trial were by no means fair and impartial to ensure due process of law. The Petitioner was denied assistance of Counsel, and there was no adequate investigation of the facts.

The 6th Amendment guarantees that an accused of a Federal Crime shall enjoy the right to assistance of counsel at the time of argument and plea.

17 *Cases Cited for Argument:* Micherer vs. Johnson 141 F 2d 171 172 C.C.A. 9th. Mills vs. United States 185 F 2d 137 5th Circuit. Evans vs. Rieres 126 F 2d 633, 637, 641 75 App. D.C. 242, Robinson vs. Johnson 50 F Supp, 727, 778 Md. Cal. 1943.

Also See: Hunter vs. U.S., 10th Cir., 166 F 2d 721, 334, US 848, 68 S Ct. 1499, 92 L. Ed. 1772; "mere perfunctory appearance for a defendant is not enough." Powell vs. Alabama, Supra, 287 US at pp 58, 71, 53 S Ct. 55 77 L Ed. 158, 84 A.L.R. 527. Glasser vs. U.S., 315 US 60, 76, 62, S. Ct. 457, 86 L. Ed. 680. Avery vs. Alabama, 308 US 444, 446, 60, S. Ct. 321 84, L Ed. 377. Johnson vs. U.S., 71 App. D.C. 400, 110 F 2d 562. Forly vs. Rogen, D.C. 52 F Supp. 265, 270.

Respectfully submitted.

Charles Edward Sanders,
CHARLES EDWARD SANDERS,
Prop. Persona.

18 In the United States District Court for the Northern District of California, Sacramento

Case No. ———

CHARLES EDWARD SANDERS, PETITIONER
vs.

THE UNITED STATES OF AMERICA, RESPONDENT, ET. AL.

In Re: U.S.A vs. Charles Edward Sanders

Petition for the writ of habeas corpus-ad-testificandum

To: The Honorable Presiding Judge, U.S. District Court, North District of California:

May it please the court:

Charles Edward Sanders, your Petitioner herein, who is presently confined under authority of commitment of the U.S. District Court for the Northern District of California, in the custody of David M. Heritage, Warden of the U.S. Penitentiary, McNeil Island, Steilacoom, Washington, committed under Register No. 27397-M, makes application to this Court for the

Northern District of California, commanding and requiring said U.S. Marshal to henceforth take possession of the body of Charles Edward Sanders before the Bar of the Court for the purpose of testifying in behalf of Motion pending hearing before this Honorable Court, under Title 28, U.S.C., Section 2255. This said Motion was filed with the U.S. Clerk for the Northern District of California at the same time as this Petition, at a time and place designated by the Court for such hearing.

Respectfully submitted.

Charles Edward Sanders,
CHARLES EDWARD SANDERS,

Petitioner.

Subscribed and Sworn to before me this day of....
....., 1959.

Authorized by Title 18, U.S.C., Sec. 4004.

-19 In the United States District Court for the Northern
District of California, Sacramento

CHARLES EDWARD SANDERS, PETITIONER

v.

THE UNITED STATES OF AMERICA, RESPONDENT, ET AL.

Affidavit and motion to proceed in Forma-pauperis:

Filed January 4, 1960

[File endorsement omitted.]

To: the Above Court, The Honorable Presiding Judge:
Greetings:

Comes now Petitioner, Charles Edward Sanders, propi-
persona, pursuant to this Honorable Court recognition of this
this Court, Petitioner respectfully represents and agrees as fol-
lows: That he is without monies within the provision set forth
in Law.

When he is entitled 28 U.S.C. Section 1915 determines his
being eligible to proceed in forma pauperis pursuant to such
recognition of this Honorable Court, because of his poverty he

is unable to prepay the cost of this Action, or to give security for same.

Petitioner is a Citizen of the United States of America and verily believes that he has meritorious cause of Action, and because of his poverty is unable to secure prepayment of Court Proceedings. In case of this Court denying him his freedom in the attached Motion to Vacate and Set Aside Sentence, to this entitled cause of action, Petitioner prays for permission to proceed in Forma-Pauperis, and a Forma-Pauperis to be known and granted by this Honorable Court.

Respectfully submitted.

Charles Edward Sanders,
CHARLES EDWARD SANDERS,
Petitioner.

20 In the United States District Court for the Northern District of California, Northern Division

Cr. No. 12310

Memorandum and order

February 3, 1960

[Title omitted.]

[File endorsement omitted.]

This is a motion made, under the provisions of Title 28 U.S.C. § 2255, to set aside and vacate the sentence imposed by this Court upon the defendant, Charles Edward Sanders. In conjunction with the motion, defendant has filed an application for a writ of habeas corpus ad testificandum directed to the Warden of the Federal Penitentiary at McNeil Island, in which defendant is presently confined as the result of the above sentence. The purpose of this latter application is to enable defendant to testify in support of his motion to set aside and vacate the sentence.

21 The files and records of this case show the following facts: The defendant was brought before this Court on Monday, January 19, 1959, charged with a violation of Title 18, U.S.C. § 2113(a) (Bank Robbery). The charge

was explained to the defendant, and a copy of the proposed information was handed to him. The Court explained to the defendant that he had a right to counsel, and he stated that he understood this right and wished to waive it. It was explained to the defendant that he could not be proceeded against except by indictment by the grand jury, unless he waived that right, and the nature of the charge was emphasized to defendant. Defendant stated that he understood, waived his right to be proceeded against by indictment, and that he wished to be proceeded against by information. In response to questioning by the Court, defendant stated that he had decided to proceed in this fashion freely and voluntarily of his own will and wish, and that no threats or promises had been made to induce him to take such action. Defendant signed a waiver of indictment, the charge was read to him, he stated that he understood the charge, and he then entered a plea of guilty.

The contentions made by defendant on this motion are: (1) He "challenges the validity of the indictment"; (2) he was denied adequate assistance of counsel; and (3) he was intimidated and coerced into entering a plea without counsel and without any knowledge of the charges against him.

Defendant's motion, although replete with conclusions, sets forth no facts upon which such conclusions can be founded.

For this reason alone, this motion may be denied without a hearing (*United States vs. Sturm*, 180 F. 2d 413; and *United States vs. Mathison*, 256 F. 2d 803).

This motion sets forth nothing but unsupported charges, which are completely refuted by the files and records of this case. Since the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief, no hearing on the motion is necessary (*Title 28, U.S.C. § 2255; United States vs. Sturm, supra; United States vs. Mathison, supra; and Johnson vs. United States*, 239 F. 2d 698).

It is, therefore, ordered that defendant's motion to set aside and vacate the sentence imposed upon him by this Court be, and it is, hereby denied;

And it is further ordered that defendant's application for a writ of habeas corpus ad testificandum be, and it is, hereby denied.

Dated: February 3, 1960.

SHERRILL HALBERT,
United States District Judge.

23 In United States District Court, Northern District of California, Northern Division

Case No. 12310

CHARLES EDWARD SANDERS, PETITIONER

v.

UNITED STATES OF AMERICA, RESPONDENT

[File endorsement omitted.]

Motion to Vacate Sentence

Filed Sept. 8, 1960

Comes now Charles Edward Sanders and moves the Court to vacate the conviction and judgment in the above entitled case on the ground that his conviction was obtained in violation of the constitution and laws of the United States because that at the time of trial and sentence the petitioner was mentally incompetent and was unable to cooperate intelligently in his defense; that his mental incompetency was the result of administration of narcotic drug during the period petitioner was held in the Sacramento County Jail pending trial in the instant case.

Wherefore, it is moved that the sentence and conviction be vacated in the above entitled pursuant to 28 U.S.C. 2255.

18 — CHARLES EDWARD SANDERS VS. UNITED STATES

24 — In the United States District Court for the
Northern District of California, Northern Division

Case No. 12310

CHARLES EDWARD SANDERS, PETITIONER

v.

UNITED STATES OF AMERICA

Memorandum in support of motion

THE PETITIONER ALLEGES IN HIS MOTION THAT HE WAS
MENTALLY INCOMPETENT AT THE TIME OF HIS TRIAL AND
SENTENCE IN THE INSTANT CASE

Such an allegation is properly raised in a proceeding under
Section 2255 of Title 28, United States Code. *Simmons v.*
United States 8 Cir., 253 F. 2d 909; *Simth v. United States*,
9 Cir., 267 F. 2d 210. In *Gregori v. United States*, 5 Cir., 243
F. 2d 48, the Court held that such an allegation was raised
in a Section 2255 motion where the issue had not been raised at
the time of trial. In *Brown v. United States*, 5 Cir., 267 F.
2d 42.

25 The Court stated:

Under the authorities it is now established that the
question of insanity at the time of trial may be

Bishop v. United States, 1956, 350, U.S. 961 *Gregori v.*
United States 5 Cir., 1957, 243 F. 2d 48; *Simmons v. United*
States 8 Cir., 253 F. 2d 909; *C. F. Massay v. Moore*, 348
U.S. 105.

Raised on a Section 2255 motion and the judgment of the
District Court is therefore reversed and the case remanded for
a hearing on the sanity of the movant at the time of his trial.

It is now well established that a defendant need not apply
for a certificate under 18 U.S.C. A 4245 before applying for
relief under 28 U.S.C. A 2255.

26 In *Gregori v. United States*, supra, it was stated in
regard to a certificate under 18 U.S.C. A. 4245 as pre-
quisite to filing under Section 2255 at page 55.

"Thus rather than concluding that Congress intended to
retract in some way the right of an accused to raise the defence

of insanity at the time of trial we find that the intent embodied in the statutory scheme *was to make certain that every mentally handicapped defendant have his day in court on this issue.* C. F. Wells v. United States, on bane, 99 U.S. App. G.C. 310, 239 F. 2d 931. However this point need not be further labored, since the motion Bishop case was also brought subsequent to the enactment of Section 4245 though the question of a possible conflict of Section 2255 with the later statute was not explicitly considered there." [Emphasis supplied.]

And in Simmons v United States supra, the Court stated at page 913: * * * the effect of the resort to a 2255 motion was also considered in the Gregori case, supr, 243 F. 2d at page 52. It is there pointed out that proceeding under 4245 come into operation only when the Board certifies that it is probable accused was insane at time of trial such a certifies will not issue in cases * * *

There is nothing in the record in the present case indicate that has issued. We are inclined to agree with the holding of the Fifth Circuit in the Gregori case supra, to the effect that if a certificate of probable cause has not issued, the accused should have the right to have the sanity issue determined under A 2255 motion."

In Nith Circuit Court of Appeal in *Simth v. United States* supra, commented on this issue as follows at page 212.

The trial judge indicated that, if Simth were applying under 18 U.S.C. A. 4245 it would be necessary for the administrative procedure to be followed before application to the court, but the opinion note above make no such exception.¹

By the above authorities it is evident that application for a certificate under 18 U.S.C. A 4245 is not a prerequisite to filing of motion to vacate under 28 U.S.C. A 2255 the allegation that the petitioner was mentally incompetent at the time of trial presents an issue of a fact that requires a hearing at which the petitioner shall be present so that he may "have his day in court on this issue," *United States v. Hayman* 342 U.S. 205; *Bishop v. United States* 350 U.S. 961.

In *Gregori v. United States*, supra, at page 55 that the court held: appellant is entitled to a prompt hearing followed by a determination of the issue and the formulation of finding of fact and conclusions of law, as required by 28 U.S.C. A. Section 2255, *Bishop v. United States*, supra."

30 The case of *Smith v. United States*, 9 cir., 259 F. 2d 125 as for the right of the appellant to have a hearing upon the question of his sanity at the time of the trial, the whole matter is settled by the decision in *Bishop v. United States*, 350 U.S. 961 76 S. C.T. 400, 1001 Ed. 835, vacating 96 U.S. App. G.C. 117. 223 F. 2d 582. "According upon the appeal from the denial of the application or motion of March 15, 1957, the order denying the petitioner is reversed and the cause is remanded with directions to provide a hearing upon the allegations of that application." 259 F. 2d at page 127.

See also the case of *Smith v. United States*, 267 F. 2d 210.

31 *Bell v. U.S.* 269 F. 2d 419 in *Brown v. United States*, supra that Court directs that the judgment of the District Court is therefore reversed and cause remanded for a hearing on the sanity of movant at the time of his trial."

[Emphasis supplied.]

In *Pledger v. U.S.* 4 Cir., 272 F. 2d 69, the Court held that the allegation the petitioner was mentally incompetent during his trial owing to the administration of drugs was properly raised in a motion under 28 U.S.C. 2255 and required a hearing.

The instant motion raises dissimilar ground relief and as the issue is within the purview of Section 2255 this Court is required to entertain it. *Barrett v. Hunter* 180 F. 2d 510;

32

CONCLUSION

It is respectfully submitted that the Court should direct that a hearing be held on the motion to enable the petitioner to present evidence to sustain the motion.

CHARLES EDWARD SANDERS,

Alcatraz, California,

Petitioner.

ALCATRAZ, CALIFORNIA.

33

United States District Court,
Northern Division

Case No. 12310

AFFIDUIT

STATE OF CALIFORNIA,
County of San Francisco, ss:

Charles Edward Sanders haveing been duly sworn-deposes and says that he was confined in the Sacramento County during the period from on or about Jan. 16, 1959 until Feb. 18, 1959.

That during period above mentioned the affiant was intermittly under the infulence of drug.

That during the period of the trial the affiant was under infulence of a drug.

That did not understand trial proceeding owing to his mental incompetency cause by the administartion of a durg.

34 That the above mentioned durgs adminstrated by the medical authorities attendent at Sacramento County Jail.

That the above mentioned durgs were given to the affiant because of beeing a known addict.

CHARLES EDWARD SANDERS.

Subscribe and to before this day of 15th day,
August, 1960 A.D.

Parole Officer authorized by Act of July 7,
1955 to administer oaths (18 U.S.C. 4004).

In the United States District Court for the Northern
District of California, Northern Division

Civil No. 8156

CHARLES EDWARD SANDERS, PETITIONER,

v.

UNITED STATES OF AMERICA, RESPONDENT

Memorandum and order

September 15, 1960

[File endorsement omitted.]

Petitioner has moved this Court to set aside and vacate the sentence pronounced against him, as the result of his conviction on a plea of guilty to the charge of violation of Title 18 U.S.C. § 2113(a) (bank robbery), in the case of United States v. Sanders, Crim. No. 12310 in the records of this Court. This relief is sought under the provisions of Title 28 U.S.C. § 2255. Petitioner alleges that he was mentally incompetent and incapable of participating intelligently at the time of his plea and sentence. He alleges that the medical authorities in the Sacramento County Jail, in which institution he was held at the time of his plea and sentence, administered narcotic drugs to him from time to time, because he was a known addict, and that these drugs rendered him mentally incompetent as aforesaid.

The record shows that petitioner was sentenced on February 10, 1959. At his request, the Court recommended that he be sent to a medical facility for treatment for narcotic addiction. On January 4, 1960, petitioner filed a motion under Title 28 U.S.C. § 2255, for the same relief which he now seeks. In this latter motion, petitioner made no mention of any mental incompetency caused by narcotic drugs, although the facts (as to his having been or not been drugged as now alleged) must have been known to him at the time of that motion. Petitioner offers, in his present petition, no excuse for the failure to raise the questions, which he seeks to raise now, at the time

he filed the earlier motion. This Court carefully considered and denied on its merits petitioner's earlier motion, by a memorandum and order filed in *United States v. Sanders*, supra, on February 3, 1960.

This Court is not required to entertain a second motion for similar relief on behalf of petitioner (Title 28 U.S.C. § 2255). As there is no reason given, or apparent to this Court,¹ why petitioner could not, and should not, have raised the issue of mental incompetency at the time of his first motion, the Court will refuse, in the exercise of its statutory discretion, to
37 entertain the present petition (See: *Daniels vs. United States*, 258 F. 2d 356; *Bickford vs. United States*, 206 F. 2d 395; *Dunn vs. United States*, 234 F. 2d 219; and *United States vs. Brown*, 207 F. 2d 310).

It is, therefore, ordered that petitioner's motion to set aside and vacate the sentence imposed upon him by this Court be, and it is, hereby dismissed.

Dated: September 14, 1960.

SHERILL HALBERT,

United States District Judge.

38 In United States District Court, Sacramento, California

Civil No. 8156

Criminal No. 12310

SEPT. 22, 1960.

CHARLES EDWARD SANDERS

v.

UNITED STATES OF AMERICA

Motion and affidavit in forma pauperis

Filed Sept. 26, 1960

[File endorsement omitted.]

¹ The Court has reviewed the entire file in Crim. No. 12310, which includes the previous proceeding, and a transcript of the proceedings at the time petitioner entered his plea, and, aside from the conclusion reached on the legal propriety of the instant petition, is of the view that petitioner's complaints are without merit in fact.

Comes now Charles Edward Sanders and respectfully moves the Court for an order permitting him to proceed in appeal to the United States Court of Appeals for the Ninth Circuit in forma pauperis.

Charles Edward Sanders in support of his motion, the affiant states upon his oath that he is a pauperis person within the meaning of Section 1915(a) Title 28 U.S.C.

1. That he is of legal age.
2. That he is a citizen of the United States by birth.
3. That he takes this action in good faith, for he verily believes he has a meritorious cause.

CHARLES EDWARD SANDERS,

Box 1437.

39 In United States District Court, Sacramento,
California

Civil No. 1856

Criminal No. 12310

SEPT. 22, 1960.

CHARLES EDWARD SANDERS

v.

UNITED STATES OF AMERICA

Notice of appeal

Name and address of appellant: Charles Edward Sanders,
Box No. 1437, Alcatraz, California.

Concise statement of Judgment: 15 years on plea of guilty violation of Title 18 Sec. 2113.

Order appealed from: Denial of motion filed under Section 2255, Title 28 U.S.C.

Date of order: September 14, 1960.

Name of Judge: Honorable Sherrill Halbert.

Notice is hereby given of appeal of the above designated order to the United States Court of Appeals for the Ninth Circuit.

CHARLES EDWARD SANDERS,

Box 1437.

40 In the United States District Court for the North-
 ern District of California, Northern Division

Civil No. 8156

CHARLES EDWARD SANDERS, PETITIONER

v.

UNITED STATES OF AMERICA, RESPONDENT

Order granting motion for leave to proceed in forma pauperis

September 27, 1960

[File endorsement omitted.]

The plaintiff having filed herein a motion, seeking permis-
 sion to proceed with an appeal to the United States Court
 of Appeals for the Ninth Circuit; this Court having considered
 the same; and good cause appearing therefor:

It is hereby ordered that said plaintiff be, and he is, hereby
 granted permission and allowed to proceed in this case with
 an appeal to the United States Court of Appeals for the Ninth
 Circuit, without the pre-payment of any fees of this Court, or
 its officers.

Date: September 27, 1960.

SHERRILL HALBERT,

United States District Judge.

42 In the United States Court of Appeals for the Ninth
 Circuit

No. 17375

CHARLES EDWARD SANDERS, APPELLANT

v.

UNITED STATES OF AMERICA, RESPONDENT

Before: HAMLEY, HAMLIN and KOELSCH, *Circuit Judges*

Opinion, per curiam

December 14, 1961

[File endorsement omitted.]

Charles Edward Sanders appeals from a district court order denying his motion, made under 28 U.S.C.A., § 2255, to set aside and vacate a judgment of conviction and sentence on a charge of bank robbery. 18 U.S.C.A., § 2113(a). The principal point urged on appeal is that the district court erred in failing to grant appellant a hearing before acting upon his motion.

On January 19, 1959, Sanders was brought before the district court, charged with a violation of 18 U.S.C.A., § 2113(a). The charge was explained to defendant and he was told that it constituted a felony for which he could be fined or imprisoned or both. A copy of the proposed information was handed to him. The court explained to defendant that he had a right to counsel and Sanders stated that he understood that he had that right but wished to waive it. It was also explained to Sanders that he could not be proceeded against except by indictment by the grand jury, unless he waived that right. Defendant stated that he understood that he had that right but waived his right to be proceeded against by indictment and consented to be proceeded against by information.

43 In response to questioning by the court, Sanders stated that he had freely and voluntarily decided to proceed in this fashion, and that no threats or promises had been made to induce him to take such action. He signed a waiver of indictment, the charge was read to him, and he stated that he understood the charge. Sanders then entered a plea of guilty.

On February 10, 1959, Sanders was brought before the court for sentencing. Upon being asked if there was anything he wished to say before sentence was pronounced, Sanders stated that, if possible, he would like to go to Springfield or Lexington for addiction cure. "I have been using narcotics off and on for quite a while," he told the court. A fifteen year sentence was then pronounced.

Sanders did not appeal from the conviction and sentence. On January 4, 1960, however, appearing *propria persona*, he filed a motion under § 2255 to vacate and set aside his sentence. The grounds relied upon were that the indictment was in-

valid, he was denied adequate assistance of counsel, and that he was intimidated and coerced into entering a plea without counsel and without any knowledge of the charges against him.

Holding that the motion contained nothing but unsupported charges which were completely refuted by the files and records, the district court, on February 3, 1960, denied the motion without hearing. Sanders did not appeal.

Appellant, again appearing *propria persona*, filed the instant § 2255 motion on September 8, 1960. The single ground advanced in support of this second § 2255 motion was that:

“* * * at the time of trial and sentence the petitioner was mentally incompetent and was unable to cooperate intelligently in his defense; that his mental incompetency was
44 the result of administration of narcotic drugs during the period petitioner was held in the Sacramento County jail pending trial in the instant case.”

This ground had not been advanced in Sanders' first motion. In an affidavit filed in support of the second motion, Sanders stated that “during the period of the trial” he was under the influence of a drug, and that he did not understand trial procedure owing to his mental incompetency caused by the administration of a drug.

This second motion was denied, without hearing, on September 15, 1960. Pointing out that in his second motion Sanders had given no reason why he could not and should not, have raised the issue of mental competency at the time of his first motion, the court stated that, in the exercise of its discretion it would refuse to entertain the second motion.

Sanders appealed to this court and was permitted to proceed in *forma pauperis*. We appointed counsel to assist him on the appeal.

It is provided in § 2255 that the sentencing court shall not be required to entertain a second or successive motion for similar relief on behalf of the same prisoner. Sanders' motion of September 8, 1960, was a second motion for “similar relief,” since in both this and the earlier motion, he sought to set aside and vacate the judgment and sentence.

Whether a court should entertain a second or successive motion for similar relief is, under the provision of § 2255 re-

ferred to above, a matter resting within the sound discretion of the trial judge. *Daffiels v. United States*, 9 Cir., 258 F. 2d 356.

Where, as here, it is apparent from the record that at the time of filing the first motion the movant knew the facts on which the second motion is based, yet in the second motion set forth no reason why he was previously unable to assert the new ground and did not allege that he had previously been unaware of the significance of the relevant facts, the district court, may, in its discretion, decline to entertain the second motion. *Moore v. United States*, D.C. Cir., 278 F. 2d 459.

Affirmed.

FREDERICK G. HAMLEY,
O. D. HAMLIN,
M. OLIVER KOELSCH,
Circuit Judges.

46

In United States Court of Appeals
for the Ninth Circuit

No. 17375

CHARLES EDWARD SANDERS, APPELLANT

v.

UNITED STATES OF AMERICA, APPELLEE

Judgment

December 14, 1961

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF CALIFORNIA, NORTHERN DIVISION

This cause came on to be heard on the Transcript of the Record from the United States District Court for the Northern District of California, Northern Division, and was duly submitted.

On consideration whereof, It is now here ordered and adjudged by this Court, that the order of the said District Court in this Cause be, and hereby is affirmed.

Filed and entered Dec. 14, 1961.

47 [Clerk's certificate to foregoing transcript omitted in printing.]

48 Supreme Court of the United States

No. 996 Misc., October Term, 1961.

CHARLES EDWARD SANDERS, PETITIONER

v.

UNITED STATES

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE NINTH CIRCUIT

*Order granting motion for leave to proceed in forma pauperis
and granting petition for writ of certiorari*

June 25, 1962

On consideration of the motion for leave to proceed herein in forma pauperis and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed in forma pauperis be, and the same is hereby granted; and that the petition for writ of certiorari be, and the same is hereby granted. The case is transferred to the appellate docket as No. 1062 and placed on the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

June 25, 1962

Mr. Justice Frankfurter took no part in the consideration or decision of this motion and petition.